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Before the
FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Assessment and Collection of)
Regulatory Fees for Fiscal Year 1999)

MD Docket No. 98-200

To: The Commission

**REPLY COMMENTS of the
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.
on the
NOTICE OF PROPOSED RULE MAKING**

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION, INC.

By:



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April 28, 1999

In response to the Further Notice of Proposed Rule Making adopted by the Federal Communications Commission ("FCC" or "Commission") on March 9, 1999,¹ and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. §1.415, the American Mobile Telecommunications Association, Inc. ("AMTA" or "Association") respectfully submits these reply comments with respect to the FCC's regulatory fee proposals for fiscal year 1999. AMTA is primarily concerned with issues surrounding commercial mobile radio service (CMRS) fee categories and payment amounts.

I. Introduction

1. AMTA is a nationwide, non-profit trade association dedicated to the interests of the specialized wireless communications industry. The Association's members include trunked and conventional 800 MHz and 900 MHz Specialized Mobile Radio (SMR) service operators, licensees of wide-area and geographic-area licensed systems in the 220 MHz, 800 MHz and 900 MHz frequency bands, and other commercial service providers operating in the 220 MHz and 450-512 MHz frequency bands.

2. The Association's members had been classified as private carriers prior to the 1993 amendments to the Communications Act.² Pursuant to the Budget Act and following a three-year transition period, the regulatory distinction between private and common carriage was replaced by a CMRS versus private mobile radio service (PMRS) analysis. Those systems offering interconnected mobile radio services to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public, were reclassified as CMRS licensees. AMTA's members include both CMRS and PMRS

¹ *Notice of Proposed Rulemaking*, MD Docket No. 98-200 (FCC 99-44, released March 24, 1999) ("NPR", "Notice").

² Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI § 6002(b), 107 Stat. 312, 392 ("Budget Act").

licensees; thus, the Association has a substantial interest in the outcome of this proceeding.

3. The Association agrees with those commenters who recommend that the Commission refine its CMRS fee categories to ensure that similar systems pay similar fees. As these Reply Comments expand upon AMTA Comments on the *Notice of Inquiry* in this proceeding,³ those Comments are incorporated herein.

II. The FCC Should Revise Its Definition of "Narrowband" Systems to Include Small SMR and Similar Systems in the CMRS Messaging Service Category.

4. AMTA again urges the FCC to refine the CMRS fee categories to conform more closely to operating realities by moving small systems incapable of functioning as mass-market CMRS Mobile Services to the Messaging Services category. The Association's position is echoed by other commenters such as the Council of Independent Communications Suppliers ("CICS") and partially by BellSouth Corporation ("BellSouth").

5. In the years since CMRS regulatory fees were first imposed, AMTA repeatedly has pointed out to the Commission the inequality inherent in the current structure. Small SMR and similar systems, incorporating less than 1 MHz in total spectrum, have been subjected to rapidly rising per-mobile regulatory fees designed for large cellular and PCS consumer networks. These two-way dispatch systems are only minimally interconnected with the public switched network, generally providing ancillary "calling" service to a small number of customers over a few, shared business telephone lines contracted for by the operator, not the customer.

6. These systems are far more similar to other dispatch systems that, for lack of

³ *Notice of Inquiry*, MD Docket No. 98-200, FCC 98-298 (adopted November 10, 1998) ("NOI"); Comments of American Mobile Telecommunications Association, Inc. (filed January 7, 1999).

interconnect authorization and those few customers, are categorized as PMRS. However, the current structure penalizes minimally interconnected systems by requiring high, mass-market network Mobile Services category fees for *all* mobiles on their systems.

7. The FCC recognized differences among CMRS services in 1997, when it created a dual CMRS fee framework: the Mobile Services category and the Messaging Services category.⁴ However, in spite of the names given to the categories, the Commission previously refused to examine the type(s) of services offered by licensees in determining into which fee category their systems fell, relying rather on “the amount of bandwidth that we have authorized.”⁵ Review of the fee structure eventually was initiated in the NOI.

8. AMTA recognizes the administrative difficulties inherent in trying to determine fee classifications on a system-by-system basis, and does not suggest that the FCC undertake the burden of distinguishing interconnected from non-interconnect-capable mobile units on individual systems. Rather, the Association supports those commenters that recommend that all small SMR and similar systems, regardless of licensed frequency band, be reclassified into the Messaging Services category.⁶

9. As stated by AMTA, CICS and BellSouth, systems with small amounts of total bandwidth simply cannot employ the sophisticated digital technology in use in larger, mass-

⁴ See, *Report and Order*, MD Docket No. 96-186, 12 FCC Rcd ____ (1997) (“1997 R&O”).

⁵ Id.

⁶ AMTA notes that the NPR requests comment on BellSouth’s position concerning reclassification only of 900 MHz SMR. NPR at ¶21, n.21. In its previous filings on this issue, BellSouth has indicated its willingness to support a decision including other “traditional SMR licensees” in the Messaging Services category, as CICS’s comments note. CICS Comments at 3. As the primary trade association for 800/900 MHz SMR and similar systems, the Association emphasizes that arguments concerning the competitive capabilities of 900 MHz SMR systems hold equally well for small systems in other frequency bands.

market networks. Such technology requires larger pieces of licensed spectrum to operate, and consumer-oriented systems must have larger amounts of spectrum to generate enough capacity and customers to justify expensive infrastructure. The FCC itself recognized these realities when it created minimum "broadband" Personal Communications Services (PCS) licenses of 10 MHz. Since the operating rules for PCS systems do not specify channelization, the FCC was referring to amount of licensed spectrum in coining the term "broadband."

10. By contrast, traditional SMR systems cannot employ such technology, and cannot generate the necessary capacity to offer services similar to PCS and cellular. As BellSouth notes, the FCC's authority for imposing regulatory fees mandates that similar CMRS services be accorded similar regulatory treatment.⁷ Therefore, SMR systems with less than similar amounts of spectrum should be removed from the Mobile Services category.

III. AMTA's Member Survey Supports the Association's Position.

11. At the request of the Office of Managing Director, AMTA undertook a short member survey to determine levels of interconnection and numbers of mobile units among small, traditional SMR and SMR-like systems now paying CMRS Mobile Services fees. The responses to the survey support strongly AMTA's position that such systems offer interconnection only as an ancillary service to dispatch, and that payment of heavy CMRS Mobile Services fees on *all* mobiles on these systems constitutes an inequitable burden.

12. The survey asked 1) whether the licensee was required to pay CMRS regulatory fees; 2) how many total mobile units were in operation on those systems liable for CMRS fees; and 3) how many interconnected units were included in that total. It requested a

⁷ Comments of BellSouth at 3, quoting H.R. Conf. Rep. No. 103-213 at 494 (1993).

breakdown of voice-only, non-voice-only and mixed-use mobile units. Finally, it asked whether the licensee would be willing to supply such information annually. A copy of the one-page survey is attached as Exhibit A to these Reply Comments.

13. Combined responses are as follows:

- Total units on CMRS Mobile Services systems: **86,206**
- Total interconnected units on these systems: **1,424 (1.65%)**
- Total voice-only mobile units: 85,991
- Total non-voice-only units: 23
- Total voice and non-voice units: 192

All of those responding indicated that they would be willing to provide such information to the FCC annually if necessary to justify a lower fee category. AMTA did not request information as to the frequency band on which the systems operate, but believes responses represent systems on the 800 MHz, 900 MHz, 220 MHz and 450 MHz bands.

14. Should the FCC determine that these systems, still belong in the CMRS Mobile Services fee category, based only on the size of their authorized bandwidth, rather than the total amount of authorized spectrum, AMTA asserts that they should be required to pay CMRS fees only on interconnected mobiles. However, as noted above, the Association realizes that the collection of such information would represent an administrative burden for the Commission. Instead, AMTA agrees that an equitable alternative would be to re-classify small systems, those that are “narrowband” in terms of total licensed spectrum within a geographic area, to the Messaging Services category. In the alternative, AMTA again recommends a third CMRS fee category for this type of system, and would support

the CICS position that systems including less than 10 MHz of licensed spectrum be re-classified into that category.⁸

IV. Conclusion

15. For the foregoing reasons, AMTA urges the Commission to re-classify small SMR and similar systems from the CMRS Mobile Service to the CMRS Messaging Services category. In the alternative, AMTA again recommends a third CMRS fee category be established for systems of less than 10 MHz of licensed spectrum in a geographic area. The Association recommends that the FCC proceed expeditiously to finalize this proceeding consistent with the recommendations detailed herein.

⁸ Comments of CICS at 5.

AMTA Regulatory Fee Survey

EXHIBIT A

Your Name: _____

Your Company: _____

1. Do you have any licenses with CMRS status, for which you pay annual regulatory fees? _____ Yes _____ No
(If No, meaning all licenses are PMRS, please do not complete the rest of the survey, but please fax this page back to AMTA now.)
2. On your licensed system(s) for which you are paying annual CMRS regulatory fees, how many total units are in operation (mobiles and portables)? _____
3. Of that total, how many units are providing service that is interconnected with the public switched telephone system? _____
(It is assumed that the remaining units are dispatch-only)
4. How many units carry voice traffic *only*? _____
5. How many units carry non-voice traffic *only*? _____
6. How many units carry both voice and non-voice traffic? _____
7. If necessary to be included in a lower fee category, would you be willing to supply this information annually to the FCC, most likely in October?
_____ Yes _____ No

When completed, please fax this page back to AMTA at 202-331-9062.

Thank you for your participation.

CERTIFICATE OF SERVICE

I, Linda J. Evans, a secretary in the law office of Lukas, Nace, Gutierrez & Sachs, hereby certify that I have, on this April 28, 1999, caused to be hand delivered a copy of the foregoing Replies to the following:

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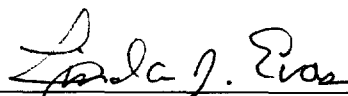
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